

National Pollution Discharge Elimination System Permit Program Delegation Elements for Delegating the CAFO NPDES Program to WSDA

Applicable Elements: 40 CFR (Code of Federal Regulations) – Chapter 1 – Part 123

123.1 Purpose and scope

1. EPA must follow certain procedures to approve, revise or withdraw a State program.
2. EPA will conduct a public hearing if there is interest for one, and will approve or disapprove the program.
3. NPDES authority may be shared by two or more State agencies. Each must have statewide authority over a class of activities or discharges. Each agency must submit its own program for review and approval.
4. Where a state program goes beyond the requirements of federal law, the additional state program is not part of the federally approved program.

123.22 Program Description

The state agency must submit a description of the state program it proposes to administer under state law in place of the federal program. The program description shall include:

1. The scope, structure, coverage and processes of the State program,
 - a. Itemized estimation of costs to establish and administer the program for the first two years including staff, administrative and technical support,
 - b. Itemized sources and amounts of funding for the first two years, including estimates of federal grant money,
2. Applicable state procedures for permits, administration or judicial review,
3. Copies of forms for permits, applications, and reports,
4. The state's compliance tracking and enforcement program.

EPA Has a Four-Stage NPDES Delegation Process

Phase 1 – Program development by State/Agency

Phase 2 – Submittal by State

Phase 3 – Review and Outreach by EPA

Phase 4 – Final Approval by EPA

Other Considerations

Program Implementation Elements

Keys to Successful Program

NPDES Delegation Procedure

Phase 1 – Development by State/Agency

1. Seek legislative approval (Completed in 2003)
2. Establish necessary statutory authority (Plan to complete in 2007)
3. Develop rules needed to implement statute
4. Prepare delegation package:
 - a. Attorney General Statement
 - b. Program and permit procedures
 - c. Resources identified to do the work
 - d. Draft Memorandum of Agreement/Compliance Assurance Agreement (MOA/CCA) between agency and EPA
5. Submit a draft package for EPA review (recommended by EPA)

Phase 2 – Formal Submittal by State

1. Governor's letter
2. Attorney General statement
 - a. Comprehensive list of statutory authority and regulations that align with each NPDES program requirement
3. Description of procedures
4. Discussion of resources for staffing, appropriate expertise, tools and funding

Phase 3 – Review and Outreach by EPA

1. Ensure the submittal package is complete and adequate (EPA has 30 days from application to make this determination)
2. Carry out a Section 7 consultation under the Endangered Species Act if required (depends on current legal case)
3. Consult with Tribes
4. Issue Public Notice and hold Hearings if requested
5. Review comments received
6. Address issues raised

Phase 4 – Final Approval

1. After ensuring the application package is complete, EPA has 90 days to approve or deny program request (by mutual agreement the 90 days may be extended, this could be to accommodate an extended period for consultation or public process)
2. Region 10 must seek concurrence from EPA Headquarters
3. Final MOA/CCA signed
4. Notice of Action is placed in Federal Register
5. Documents turned over to the State

Program Implementation Elements

CAFO permit issued

1. Upon program transfer, existing general and individual permits remain in effect
2. WSDA develops or updates new permits as needed
3. WSDA implements current effluent limitation guidelines in subsequent permits
4. Permits should incorporate Water Quality Based standards as appropriate

Individual Permit Process

1. Determine application is complete
2. Issue public notice of application
3. Draft fact sheet and permit
4. Issue public notice (EPA is copied and can comment and present objections)
 - a. Permit application, draft permit and fact sheet made available for review
 - b. Public hearings if sufficient interest expected or hearing is requested
5. Address public and EPA comments made during the review period on both the fact sheet and permit
6. Issue the final fact sheet and permit
7. After 30 day appeal period, if no appeals are made, the permit is effective
 - a. Appeals may be made by permit holder or public

Issuing Permits



1. Permits expire every five years and should be reviewed and rewritten
2. Agency is required to keep backlog of 'out of date' permits down to 10%

General Permit Process

- 1) Department makes determination to develop a general permit
 - a) Covers category of dischargers
- 2) Department issues public notice of determination to develop general permit
- 3) Draft fact sheet and permit for type of facility covered
- 4) Department issues public notice (EPA is copied and can comment and present objections)
 - a) Draft permit and fact sheet made available for review
 - b) Public hearing held
- 5) Address public and EPA comments made during the review period on both the fact sheet and permit
- 6) Issue the final fact sheet and permit
- 7) After 30 day appeal period, if no appeals are made, the permit is effective
 - a) Appeals may be made by permit holders or public
- 8) Determine that applications by facilities seeking coverage under the permit are complete
- 9) Applicant issues public notice for application for coverage
 - a) Applications made available for review
 - b) Public hearings if sufficient interest expected or hearing is requested
- 10) After 30 day review period, coverage is issued
 - a) Appeals may be made by permit holder or public only on whether the general permit is appropriate for the applicant – not on the terms and conditions of the permit

Compliance and Enforcement Elements

1. Inspections
2. Inspection reports
3. Review of monitoring or special projects reports
4. Quarterly assessment of significant non-compliance
5. Appropriate enforcement actions (administrative, civil, criminal)

Data Management (Permit Compliance System)

1. Permit data entered
2. Facility monitoring data entered
3. Inspection activity tracked
4. Compliance data can be retrieved
5. Filing of required information made to EPA permit data system

Resources

1. Funding to meet anticipated work load and related tools and equipment
2. Staffing
 - a. Technical expertise available as needed (field inspectors, manager, administrative support, data processor, lab services, legal counsel, engineer, scientist, biologist)
 - b. Appropriate data management software

Keys to Success According to EPA

1. Limit re-invention of the wheel, use existing good state programs and tools
2. Ensure legislative support
3. Identify and obtain sufficient and appropriate resources
4. Communicate and Coordinate often
 - a. Work closely with EPA on legislative and funding packages
 - b. Receive training from EPA during program development
 - c. Plan strategically to coordinate with TMDLs and related water quality activity